United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

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76-7203

United States Court of Appeals

For the Second Circuit

Docket No. 76-7203

NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO,

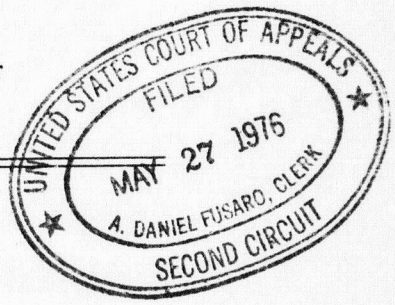
Appellants,

—against—

HUGH CAREY, GOVERNOR OF THE STATE OF NEW YORK, and ROBERT P. WHALEN, COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK,

Appellees.

Appeal from the United States District Court for the Southern District of New York



APPELLANTS' BRIEF

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:
Appellants, :
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v. :
:
HUGH CAREY, GOVERNOR OF THE STATE OF NEW YORK, and ROBERT P. WHALEN, COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK, :
:
Appellees.
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STATEMENT OF THE ISSUES PRESENTED

1. Whether the appellants lack standing to seek declaratory and injunctive relief against enforcement by the appellees of State regulations in conflict with the Federal Social Security Law?

2. Whether the complaint, which alleged that the State regulation was in conflict with the Labor-Management Relations Act, as amended, 29 U.S.C. §151 et seq., and thus void, failed to state a claim upon which relief could be granted?

STATEMENT OF THE CASE

The plaintiffs-appellants, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (herein "National Union") and District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (herein "District 1199") appeal from a judgment dated March 26, 1976 (A. 58)* denying their motion for a preliminary injunction and dismissing the complaint.

STATEMENT OF FACTS

On or about November 1, 1975 the Commissioner of the New York State Department of Health filed with the Secretary of State regulations including Sections 86.21(k) and 86.17 that "freeze" for an indefinite period of time any increase in Medicaid rate reimbursement to all health care institutions in the State of New York in excess of the rates established for the year 1975. Wages and salaries constitute approximately sixty (60%) percent of the total costs of health care facilities. These "freeze" regulations in effect impose a blanket halt to wage and/or monetary increases to employees in the health care institutions in the State of New York since the cost of Medicaid

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* "A" references are to the printed appendix.

ranges in Hospitals and Homes from 25% to 90% of its total cost depending on the institution in question.*

As will be more specifically dealt with hereinafter, this "freeze" by the State of New York was alleged by the appellants to be in conflict with Title XIX of the Social Security Act and regulations thereunder, and with the Labor-Management Relations Act, as amended ("LMRA"), 29 U.S.C. §151 et seq.

The impact of this "freeze" has recently been experienced by the National Union. After organizing employees employed by Lakeshore Nursing Home located in Rochester, New York and after certification by the National Labor Relations Board of District 1199 as collective bargaining agent, the parties reached an impasse in negotiations principally occasioned by the impending freeze in Medicaid rates that seriously affected Lakeshore Nursing Home. This resulted in a strike for several weeks. On or about December 29, 1975, the parties entered into a full-length collective bargaining agreement containing wage increases and other fringe benefits, subject to the Employers receiving reimbursements from the Department of Health. Immediate and diligent efforts were made to obtain such reimbursement. A flat refusal was the unequivocal answer due to the Medicaid wage "freeze". As provided in such contingency by the collective bargaining agreement above-mentioned, the strike and picketing

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* 10 N.Y.C.R.R. 86.21(k) and 86.17 are set forth at A. 7, 8.

continued and thus the good faith collective bargaining engaged in by both parties in accord with federal law was rendered futile by the State regulation. (A. 8, 9, 29-31).

Other collective bargaining agreements of District 1199 have expiration dates prior to June 30, 1976 and subsequent thereto where the Union will be faced with similar situations which effectively nullify bona fide collective bargaining and which leaves strike activity as the only available alternative thus running contrary to the purposes of the LMRA to settle labor disputes in the health care field, wherever possible, without the necessity of disturbing patient care, as well as conflicting with mandate of the Social Security Act that payment of all reasonable costs of inpatient service must be part of the State plan to conform to the federal standards.

Of utmost importance is the collective bargaining agreement between District 1199 and the League of Voluntary Hospitals and Homes of New York, Inc. ("League") which expires June 30, 1976. This association-wide agreement covers over 50 Hospitals and Homes in the City of New York and involves about 40,000 members of District 1199 in various capacities from service and maintenance employees to professional employees. Because of the Medicaid freeze, representatives of the League have declared that they will not be able to negotiate any increases in wages or fringe benefits for employees covered by

the agreement. This not only means that the basic structure of the LMRA, which provides for good faith bargaining to resolve disputes, will be nullified by the State regulations, but also means that a strike is all but inevitable, thus destroying the LMRA's aim of averting strikes in the health care industry. (A. 9,10,22, 34-36).

The National Union and District 1199 therefore sought a preliminary injunction enjoining the appellees from enforcing those regulations imposing a "freeze" in Medicaid reimbursement rates as being inconsistent with Title XIX of the Federal Social Security Law, 42 U.S.C. §1396, et seq., and the LMRA.

The court below, faced solely with appellants' motion for a preliminary injunction, not only denied the injunction but dismissed the complaint deciding that the appellants lacked standing to bring the challenge under the Social Security Act and that the complaint failed to state a claim upon which relief could be granted with respect to the cause of action under the LMRA.

ARGUMENT

I

THE COURT BELOW INCORRECTLY CONCLUDED THAT THE APPELLANTS LACKED STANDING TO CHALLENGE THE STATE REGULATIONS IMPOSING A FREEZE ON MEDICAID REIMBURSEMENT RATES AS BEING IN CONFLICT WITH THE FEDERAL SOCIAL SECURITY LAW.

Initially, appellants claim that Judge Metzner erred in dismissing the complaint although the appellees had made no motion for such relief. By taking such action, without notice, the Court improperly precluded appellants from seeking to amend the complaint to include more specific averments of actual injury suffered by them or to supply information deemed necessary by the Court to establish standing.

The United States Supreme Court has recently indicated that even where a motion to dismiss is made, leave to amend should generally be permitted:

> "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. . . . At the same time it is within the trial court's power to allow or require the plaintiff to supply, by amendment, to the complaint or by affidavit, further particularized allegations of fact deemed supportive of plaintiff's standing." Warth v. Seldin, 422 U.S. 490, 95 S.Ct. 2197, 2206, 2207.

A fortiori, in this case, where no motion to dismiss was made, the court below should not have dismissed the complaint without giving appellants the opportunity discussed in the Warth case. See ACHA v. Beame, __F.2d__, 12 FEP cases 257 (CA 2, 1976).

Substantively the court was incorrect in its holding that appellants lacked standing to challenge the State regulations as being in conflict with the Federal Social Security Act.

The question of standing involves both constitutional and prudential limitations. Article III, §2 of the Constitution limits federal court jurisdiction to cases and controversies, an aspect of which concerns the standing of the plaintiff:

> "In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 95 S.Ct. 2197, 2205. (Emphasis in original)

The test of constitutional standing is whether the plaintiff has suffered "injury in fact". Schlesinger v. Reservists Committee To Stop The War, 418 U.S. 208, 94 S.Ct.

2925, 2931. Appellants alleged that a contract, in which all the terms and conditions of employment were agreed upon, became null and void as a result of the appellee Commissioner of Health's refusal to grant reimbursement to the employer for reasonable wage increases. As a result the National Union was forced to resume a strike at great cost to itself and to the public. (A. 8,9, 29-31).

Appellants further alleged that District 1199 is a party to a collective bargaining agreement currently in effect between it and the League, an employer association representing over 50 voluntary hospitals and homes which employ over 40,000 members of District 1199. The current contract expires June 30, 1976. Representatives of the League have informed officers of District 1199 that the "freeze" regulations will make it impossible for it to agree to any increases in wages or other monetary items in negotiations for a new agreement thus forcing District 1199 and its members to resort to a strike. (A. 9, 10).

In addition to the injury to the appellants and their members discussed above, the appellants alleged that the "freeze" will interfere with and adversely affect their ability to engage in organizing employees in the health care industry, and has caused a number of employers to lay off members of District 1199. (A. 14- 36, 45-47). Thus there can be no question that appellants have suffered "injury in fact".

It is not clear from its decision whether the court

below nevertheless concluded that the appellants suffered no injury, or if it decided that appellants could not meet prudential rules for standing. The key paragraph of the opinion denying standing is as follows:

> "However, there is no statutory provision in the federal legislation providing for Medicaid programs which can be understood to afford plaintiffs a right to judicial relief. The legislative history of the statute reveals no intent to protect health care employees. In other words, the 'logical nexus between the status asserted and the claim sought to be adjudicated' (Flast v. Cohen, 392 U.S. 83, 102 (1968)), is not present." (A. 54)

It is the position of the appellants that the court applied the wrong test in deciding the standing question; that the sole test of standing in this case should be injury in fact, which appellants have alleged in sufficient detail; that even under the test applied by the court below, appellants have standing.

In recent years the Supreme Court has greatly expanded the concept of standing. It has applied a twofold test to determine standing in cases seeking review of administrative action. In Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 90 S.Ct. 827 (1970), and Barlow v. Collins, 397 U.S. 159, 90 S.Ct. 832 (1970), the court held that a plaintiff had standing to obtain review of federal administrative action by establishing "injury in fact, economic or otherwise", which has clearly been alleged in this case,

and by showing that the interest sought to be protected was one which was "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question".

These cases involved the reach of §10 of the Administrative Procedure Act (herein "APA") (5 U.S.C. §702) which provides that:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof."

Thus the "zone of interests" test applies the prudential limitations of the standing concept in accord with Congressional intent as evidenced by §10 of the APA.

However, appellants in this case were not seeking review of federal administrative action which is the type of action in which the "zone of interests" was discussed.* Therefore the sole requirement in this case should be injury in fact. In Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361 the Court

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* It has been argued that Investment Co. v. Camp, 401 U.S. 617, 91 S.Ct. 1091 dispensed with the zone of protected interests requirement. See Sedler, Standing, Justiciability, and All That: A Behavioral Analysis, 25 Vand. L.Rev. 479, 486-87 (1972).

recognized two separate and distinct criteria for determining standing. One involving review of federal administrative agencies or actions of public officials pursuant to the APA under which the twofold test set forth in Data Processing and Barlow are to be followed and the other, "where the party does not rely on any specific statute authorizing invocation of the judicial process".

In the latter situation "[w]hether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a 'personal stake in the outcome of the controversy', Baker v. Carr, 369 U.S. 186, 204, 812 S.Ct. 691, 703, 7 L.Ed.2d 663, as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution': Flast v. Cohen, 392 U.S. 83, 101, 88 S.Ct. 1942, 1953, 20 L.Ed.2d 947". Sierra Club v. Morton, 405 U.S. 727, 731, 732, 92 S.Ct. 1361, 1364.

Appellants, as noted, have alleged injury to themselves. In addition, "an organization whose members are injured may represent those members in a proceeding for judicial

review." Sierra Club v. Morton, 405 U.S. at p. 739, 92 S.Ct. at 1368.* See also, Warth v. Seldin, 422 U.S. 490, 95 S.Ct. 2197, 2211, 2212; International Union/United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) AFL-CIO v. Hoosier Cardinal Corp., 383 U.S. 696, 86 S.Ct. 1107; United Federation of Postal Clerks, AFL-CIO v. Watson, 409 F.2d. 462 (D.C.Cir. 1969); Seafarers International U. of No.Amer. v. Weinberger, 363 F. Supp. 1053 (D.C. D.Col., 1973).

In National Ass'n. of Letter Car. v. Independent Postal Sys., 470 F.2d 265 (C.A.10, 1972), the plaintiff, a national union of letter carriers sued the defendant, a private corporation seeking a declaratory judgment and injunctive relief alleging that the defendants proposed to sell their own postage stamps and deliver Christmas cards in envelopes bearing those stamps, in violation of the law granting the United States a monopoly in the delivery of letters. The court held that plaintiff union had standing to protect the employment interests of its members and granted injunctive relief. Similarly in this case, the plaintiffs have alleged economic injury to their members and thus have standing to bring the action.

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* Standing was denied in Sierra Club solely because plaintiff had failed to allege any injury to itself or its members. Amendment of the complaint was allowed on remand. See Sierra Club v. Morton, 348 F.Supp. 219 (D.C. Cal., 1972).

In United States v. SCRAP, 412 U.S. 669, 689, 93 S.Ct. 2405, 2417, the court held that any level of injury in fact is sufficient to satisfy the requirement that a person be "aggrieved" and quoted from a distinguished commentator (Davis) that "an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation."

The injury suffered by appellants and their members are assuredly more than a "trifle" and assure that they have such a "personal stake in the outcome of the controversy" as to ensure that "the dispute sought to be adjudicated will be presented in an adversary context". Therefore standing should have been found. (See Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705 where the court held that a pregnant woman had standing to challenge the constitutionality of the Texas criminal abortion laws on the sole basis of the"personal stake" test). See also Roe v. Ferguson, 515 F.2d 279 (C.A.6 1975).

Even assuming that the "zone of interests" test is also applicable, appellants would not lack standing. 42 U.S.C. 1396a (a)(13)(D) states that a state plan for medical assistance must provide:

> "for payment of the reasonable cost of inpatient hospital services provided under the plan, as determined in accordance with methods and standards . . . which shall be developed by the state and reviewed and approved by Secretary [of H.E.W.]."

42 U.S.C. §1395x (x)(1)(A) further provides:

> "The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services. . . ."

Pursuant to 42 U.S.C. §1302 the Secretary of Health, Education and Welfare is authorized to make and publish rules and regulations necessary to the efficient administration of the Social Security Act. The regulations promulgated by the Secretary of Health, Education and Welfare are designed to clarify the language of the statute and are perfectly consistent with the statute and reinforce its purposes.

The payment of reasonable charges is covered in the regulations. 45 C.F.R. 205.30 provides in pertinent part:

> "(a) State plan requirements. A State plan for medical assistance under Title XIX of the Social Security Act must:
>
> * * *
>
> "(2) provide for payment of the reasonable cost of inpatient hospital services . . . under this requirement:
>
> (i) Plans for payment of reasonable cost will be approved which adopt the Title XVIII standards and principles described in 20 CFR 405, 402-405, 455. . . ."

20 C.F.R. §405.402 states:

> "(a) In formulating methods for making fair and equitable reimbursement for services rendered beneficiaries of the program, payment is to be made on

the basis of current costs of the individual provider, rather than costs of a past period or a fixed negotiated rate. All necessary and proper expenses of an institution in the production of services, including normal standby costs, are recognized. Furthermore, the share of the total institutional cost that is borne by the program is related to the care furnished beneficiaries so that no part of their cost would need to be borne by other patients. Conversely, costs attributable to other patients of the institution are not to be borne by the program. Thus, the application of this approach, with appropriate accounting support, will result in meeting actual costs of services to beneficiaries as such costs vary from institution to institution. . . .

"(b) Putting these several points together, certain tests have been evolved for the principles of reimbursement and certain goals have been established that they should be designed to acoomplish. In general terms, these are the tests or objectives:

(1) That the methods of reimbursement should result in current payment so that institutions will not be disadvantaged, as they sometimes are under other arrangements, by having to put up money for the purchase of goods and services well before they receive reimbursement.

(2) That, in addition to current payment, there should be retroactive adjustment so that increases in costs are taken fully into account as they actually occurred, not just prospectively.

(3) That there be a division of the allowable costs between the beneficiaries of this program and the other patients of the provider that takes account of the actual use of services by the beneficiaries of this program and that is fair to each provider individually. . . ." (Emphasis added)

It is significant that 20 C.F.R. 405.402(a) provides that "[a]ll necessary and proper expenses of an institution in the production of services, including normal standby costs, are recognized". Certainly, freely negotiated wage increases are a necessary and proper expense of an institution. 20 C.F.R. 405.402(b)(2) further provides that "there should be retroactive adjustment so that increases in costs are taken fully into account as they actually occurred. . .". Here again the federal regulation makes its intention perfectly clear. Negotiated wage increases are without doubt the type of increases in costs contemplated by the regulation. Thus it is clear that the interests asserted by appellants are "arguably" within the regulated or protected zone under the statute and regulations.

Indirect regulation or protection is adequate to bring a party within the "zone of interests" test. Cotovsky-Kaplan Physical Therapy Assoc. Ltd. v. United States, 507 F.2d 1363 (C.A.7 1975) (per Stevens, J.). Cf. New Jersey Chapter Incorporated of the American Physical Therapy Association, Inc. v. Prudential Life Insurance Co. of America, 502 F.2d 500 (C.A.D.C. 1974). As was noted in a recent Supreme Court decision:

> "When a governmental prohibition or restriction imposed on one party causes specific harm to a third party, harm that a constitutional provision or statute was intended to prevent, the indirectness of the injury does not necessarily deprive the person harmed of standing to vindicate his rights." Warth v. Seldin, 422 U.S. 490, 95 S.Ct. 2197, 2208.

This is exactly the situation prevailing in this case. The "freeze" regulation imposed a restriction on employers in the health care field which caused harm to the appellants and their members, harm that the provisions in the Social Security Act and the regulations promulgated thereunder were intended to prevent by mandating the payment of all reasonable costs, including increases in wages and fringe benefits. Under these circumstances the court below erred in denying standing to the appellants.

II.

THE APPELLANTS' CAUSE OF ACTION ALLEGING THAT THE FREEZE REGULATIONS 10 N.Y. C.R.R. 86.21(k) and 86.17 ARE NULL AND VOID AS THEY INTERFERE WITH, ENCUMBER AND RESTRAIN BONA FIDE COLLECTIVE BARGAINING IN THE HEALTH CARE INDUSTRY IN VIOLATION OF THE SUPREMACY CLAUSE IN ARTICLE VI OF THE UNITED STATES CONSTITUTION SETS FORTH A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The laws of the United States are the supreme laws of the land. United States Constitution, Article VI.

Federal regulation of a field affecting commerce is pre-emptive of state regulatory power where Congress has so ordained or where the state regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress". Hines v. Davidowitz, 312 U.S. 52, 67. See also Castle v. Hayes Freight Lines, Inc., 348 U.S. 61.

That Congress has intended the field of labor management relations to be within the exclusive domain of Federal regulation and pre-emptive of State interference is a principle of law established beyond argument. San Diego Building Trades Council v. Garmon, 359 U.S. 236. The LMRA reflects a clear Congressional intent that labor-management relations affecting the free flow of commerce were to be regulated under a uniform federal law. See, e.g. Amalgamated Utility Workers v.

Consolidated Edison Co. of N.Y., 309 U.S. 261; Myers v. Bethlehem Shipbldg. Corp., 303 U.S. 41; Garner v. Teamsters Union, 346 U.S. 458; Guss v. Utah Labor Relations Board, 353 U.S. 1; Picatello Building & Construction Trades Council v. Elle Construction Co., 352 U.S. 884; Division 1287 of the Amalgamated Association of Street, Electric Ry. and Motor Coach Employees of America v. Missouri, 374 U.S. 74 (1963).

That Congress intended to pre-empt the health care industry from State regulations which encumber bona fide collective bargaining is demonstrated by the August 25, 1974 amendment to the LMRA, Public Law 93-360, 93rd Cong., S. 3203, 88 Stat. 395. The amendment provided for the inclusion of health care institutions under the coverage of the LMRA and made specific provisions for advance notice to health care employers of work stoppages or intention to modify a collective bargaining agreement. See Sections 2(a); 2(14); 8(d); 8(g); and 213 of the LMRA, 29 U.S.C. §§152(2); 152(14); 158(d); 159(g) and 183.

Section 2(14) defines a health care institution as "any hospital, convalescent hospital . . . , nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged person".

Section 7 of the LMRA, 29 U.S.C. 157 provides that

employees shall have the right to "bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining. . . ." Section 8(a)(5), 29 U.S.C. 158(a)(5) provides that it shall be an unfair labor practice for an employer to "refuse to bargain with the representatives of his employees".

Section 213, 29 U.S.C. 183 sets forth an entire Federal procedure for the resolution of labor disputes in the health care industry by the use of federally appointed mediators and fact finders through the auspices of the Federal Mediation and Conciliation Service, an agency created pursuant to Section 202 of the LMRA, 29 U.S.C. §182. The fact finding panel is empowered pursuant to Section 213 to issue a report with recommendations for a just settlement of the dispute.

Section 201(a), 29 U.S.C. 171(a), provides that it is the policy of the United States that:

> "(a) Sound and stable industrial peace and the advancement of the general welfare, health and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees."

Congress, in amending the LRMA, to bring within its coverage almost all health care institutions, was well aware

of the sensitive nature of the industry and the responsibility of both unions and employers to make special efforts to peacefully resolve their disputes without interruption of vital health care to the patients. That is why, of course, Congress provided for special notice provisions and a very promiment role to be played by the Federal Mediation and Conciliation Service.

How ironic, then, is it for the Commissioner of Health to attempt to crumble the very foundations of the structure carefully built into Federal law. It is utterly impossible to engage in good faith bargaining under the State regulation. If a health care institution and a union which represents its employees reach agreement on the terms of a collective bargaining agreement after good faith bargaining and perhaps the intercession of Federal mediation, which is exactly the result sought by the LMRA, and the agreement provides for reasonable increases in wages and benefits, the State regulation intercedes and sets all asunder. Such increased costs, no matter how reasonable and necessary, shall not be reimbursable. Such is the mandate of Section 86.17.

How can unions and employers in this field engage in good faith bargaining as decreed by Federal law when the State regulation will absolutely not give any effect to such bargaining? The State regulation is thus irreconcilable with Federal law and is null and void.

In the recent case of North Shore University Hospital v. Levine, ___F. Supp.___, 90 LRRM 2529 (E.D.N.Y. 1975), the court held that the New York State Industrial Commissioner was pre-empted from compelling a hospital to submit to compulsory arbitration of the terms and conditions of a collective bargaining agreement. The New York State Labor Law §716 provided for compulsory arbitration of the terms of a collective bargaining agreement where the parties had reached an impasse in bargaining. The Industrial Commissioner issued an order prior to August 25, 1974, the effective date of the health care amendment, directing the parties to compulsory arbitration and appointed an arbitrator for the purpose of issuing an award setting forth the terms and conditions of employment in lieu of the parties' voluntary agreement. Subsequent to August 25, 1974, the hospital brought an action in Federal court, pursuant to 28 U.S.C. §1337 to enjoin the Industrial Commissioner from compelling arbitration on the basis that the Industrial Commissioner was pre-empted from interfering with the scheme of voluntary collective bargaining through federal mediation and conciliation as provided for in the LMRA as amended. The court held in issuing an injunction that:

> "It is a fundamental principle of law that although a state may initially have jurisdiction, pursuant to state statutes, to regulate an industry and to enforce its regulations through state agencies, once the federal government enacts a law which is directly in conflict with the state's regulatory scheme,

> the field is pre-empted and the state's statutes must give way to the federal law and the jurisdiction of state agencies to enforce the inconsistent state statute is terminated. San Diego Building Trades Council v. Garmon, 359 U.S. 236, 43 LPRM 2338 (1959); Meyers v. Bethlehem Ship Building Corp., 303 U.S. 41, 14 LRRM 575 (1938).
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> * * * * *
>
> "Indeed, compelling arbitration is in direct conflict with the policies of the National Labor Relations Act which endows parties to labor disputes with the right to freely bargain without being compelled to agree. H. K. Porter v. NLPB, 397 U.S. 99; NLRB v. Fainblatt, 306 U.S. 601; O.C.A.W. v. Arkansas Louisiana Gas Co., 332 F.2d 64 (10th Cir. 1964)." 90 LRRM at 2531 (Emphasis added).

Bargaining unbridled by state interference lies at the heart of the LMRA. In a concurrent action, St. Josephs Hospital v. Levine, 174 Civ. 351 (N.D.N.Y. 1975) based on facts identical to those of North Shore University Hospital, supra, the court requested the opinion of the NLRB as to whether the health care amendment pre-empted the Industrial Commissioner's jurisdiction to compel arbitration. The then General Counsel wrote:

> "Congress clearly intended that the new amendments would pre-empt state law prospectively. 120 Cong. Rec.H.6392-6393, daily edition, July 11, 1974. . . . The Board's view that pre-emption operates to preclude future proceedings under state law thus accords with the authorities holding that a change in law affects

the validity of prospective order in future relief." (The letter is annexed hereto at A.1).

In a fact situation analogous to the facts of the instant case, a noted authority in the field of labor relations, Professor Clyde Summers of Yale University Law School was appointed as a fact finder pursuant to §213 of the LMRA, 29 U.S.C.A. §283 in the matter of Waterbury Hospital and District 1199, Case No. H.C. 175-732-B.C.1. Professor Summers has written numerous authoritative articles on the subject of collective bargaining which have appeared in a great number of legal periodicals including the Yale Law Journal. The hospital argued that a wage increase limitation imposed by the Connecticut State Medical Assistance Program for reimbursement rates imposed a limitation on the wage increases that the fact finder could lawfully recommend.

Professor Summers in his report wrote:

"B. State Statutory Impediments

In 1973, the Connecticut legislature enacted Public Act No. 117, creating a Commission on Hospitals and Health Care. Among the powers granted to this Commission is the power to require every hospital to submit an annual budget showing its projected operating costs and capital expenditures (Sections 9-16). The commission is empowered to approve or disapprove the budgets as submitted, and if a budget is disapproved, the hospital is required to change its budget to conform to the Commission's orders.

"The Hospital stated that the Commission had announced and had followed the

policy of refusing to approve any budget which included more than a 9% increase in labor costs. The Hospital, therefore, was constrained to limit increases in wages to that amount, and its proposal was designed to keep within that limit.

"I am charged by a federal statute to hold hearings, find facts, and make recommendations 'to achieve a prompt, peaceful **and** just settlement'. That statute is the supreme law of the land and I am constrained to fulfill its purposes even though that may run counter to the state statute. Congress has expressed a considered policy that collective bargaining in hospitals shall be governed by federal law, and that overrides the policy of any state commission. Free collective bargaining cannot function in hospitals if a state commission determines the hospital's best offer. The bargaining process is totally frustrated if the definitive decision is made before bargaining begins and those who make it never come to the bargaining table. Fact-finding would be meaningless if the Board of Inquiry were bound by a rule made by a commission without any inquiry into the facts of the case.

"These limitations attempted to be imposed on hospitals freely bargaining for terms and conditions of employment are of dubious constitutionality. As one charged with performing a federal function under federal law, I cannot allow myself to be bound by them or to give them any weight in making my recommendations. Moreover, I feel confident that the Commission will recognize that where wages are determined by collective bargaining, reinforced by the employees' federally protected right to strike, it will grant an exception to its general policy and approve whatever budget is necessary to implement a settlement." (Emphasis added). (A copy of the relevant provisions of said report is annexed hereto at A.2).

Thus, it is abundantly clear that the Medicaid freeze regulations are an invalid exercise of state authority, in that they interfere with free collective bargaining. As noted above, wages constitute approximately 60% of the costs of inpatient health care services. A freeze on increases in payments of services is in effect a freeze on wages, which as Professor Summers aptly points out, impedes the federal procedure for free and bona fide collective bargaining. The situation involving the National Union and Lakeshore Nursing Home is a case in point. The refusal of the appellees to approve the reasonable actual cost increases due to negotiated wage increases caused a strike settlement to be lost and a strike to continue. It should be further noted that the federal fact finders report and recommendations and the federal mediators' efforts were rendered a nullity as a result of the Medicaid freeze. The League of Voluntary Hospitals and Homes of New York, Inc. has already informed District 1199 that it will be unable to agree to any increases in wages or other monetary items. The net result will be a strike and the total disruption of industrial peace in the health care industry in New York, a situation which would be avoided if state impediments to bargaining were removed. The disruption of the federal purpose of unbridled collective bargaining will surely be defeated and mortally incumbered if the Medicaid freeze is not striken by the Court as pre-empted and void under the Supremacy Clause in Article VI of the United States Constitution.

CONCLUSION

For the above stated reasons the decision of the court below dismissing the complaint should be reversed.

Respectfully submitted,

SIPSER, WEINSTOCK, HARPER, DORN
& LEIBOWITZ
Attorneys for Appellants

Of Counsel:

RICHARD DORN

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

November 6, 1974

The Honorable Edmund Port
Judge, United States District Court
for the Northern District of New
York
Auburn, New York 13021

RECD NOV 8 1974

Re: No. 74-CV-351 -- St. Joseph's Hospital v. Louis L. Levine, et al.
(USDC-ND-NY)

Dear Judge Port:

The National Labor Relations Board has just authorized me to state that in its view the nonprofit hospital amendments to the National Labor Relations Act preempted state law on August 25, 1974, their effective date and, accordingly, that the state arbitration proceeding involved in this case should be terminated if the plaintiff hospital's operations affect commerce within the meaning of Section 1(7) of the Act.

Congress clearly intended that the new amendments would preempt state law prospectively. 120 Cong. Rec. H 6392-6393, daily edition, July 11, 1974. Although interest arbitration was ordered under state law prior to the effective date of the amendments to the Act, the arbitrator has not yet heard the case or issued a decision. The Board's view that preemption operates to preclude future proceedings under state law, thus, accords with the authorities holding that a change in the law affects the validity of prospective orders or in futuro relief. See State of Penn. v. Wheeling and Belmont Bridge Co., 59 U.S. 421, 431-432 (1855); Duplex Co. v. Deering, 254 U.S. 443, 464 (1921); N.L.R.B. v. Edward G. Budd Mfg. Co., 169 F. 2d 571, 574-575, 579 (C.A. 6, 1948), cert. denied, 335 U.S. 980. See also U.S. v. Swift & Co., 286 U.S. 106, 114-115 (1932); Ziffrin, Inc. v. U.S., 318 U.S. 73, 78 (1943).

Federal law precludes a compelled resolution of collective bargaining disputes (H.K. Porter v. N.L.R.B., 397 U.S. 99 (1970)) and permits a strike after compliance with the notice requirements of the Act if mediation efforts are unsuccessful (Section 13 of the Act and authorities cited below). Thus, if the state-ordered arbitration were permitted to continue until the arbitrator had resolved the issues and specified contract terms for the parties, there would be a serious question whether the employer would have to sign and give effect to the arbitrated agreement or whether the employees could any longer be prohibited from striking by state law.

Moreover, termination of the state proceeding now would not precipitate a strike, without further bargaining, because the association would be required to provide 30 days' notice of the existence of a dispute over initial contract terms to the appropriate authorities (Section 8(d)(1)(B) of the amended Act, Public Law 93-360) and, after expiration of the 30-day notice period, an additional 10 days' notice prior to striking (id. at Section 8(g)). In the meantime, the Federal Mediation and Conciliation Service would attempt to bring the parties to agreement and the parties would be required to participate fully and promptly in meetings undertaken for this purpose (id. at Section 8(d)(1)(C)). In sum, termination of the state proceeding at this point would forestall the difficult questions that could arise on the effect of such an arbitrated contract under the Act, would give bargaining and federal mediation a chance to resolve the disputes of the parties, and would protect the employees' right to strike, but only after the requisite notices, bargaining, and mediation efforts.

I regret that I was not able to answer sooner your letter of August 27, 1974, and trust that this response will be of some help on the questions you posed.

Very truly yours,

Peter G. Nash
General Counsel

cc: Susan S. Robfogel, Esq.
Robert A. Contiguglia, Esq.
New York State Nurses Ass'n.

FEDERAL MEDIATION AND CONCILIATION SERVICE

FACT-FINDER'S REPORT

In the Matter of Fact-Finding between

LOCAL 1199, DRUG & HOSPITAL UNION, AFL-CIO

-and-

THE WATERBURY HOSPITAL

Case No. H.C. 175-732-B01

Appearances: For the Union:

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Waterbury, Connecticut 06720

I. STATEMENT OF FACTS

Local 1199, Drug and Hospital Union, AFL-CIO (hereinafter, the Union) is the certified bargaining representative of two bargaining units in the Waterbury Hospital (hereinafter, the Hospital), the Maintenance Unit and the Service Unit. Collective agreements covering both of the units expired on September 30, 1974.

On September 11, 1974, pursuant to Section 8(d)(3) of the Labor-Management Relations Act, as amended July 26, 1974, to make the Act applicable to hospitals, the Union gave notice to the Federal Mediation and Conciliation Service of the existence of a dispute.

On October 14, 1974, pursuant to Section 213 of the Labor-Management Relations act, as amended, the Director of the Federal Mediation and Conciliation Service established a Board of Inquiry consisting of a sole member, Clyde W. Summers, of New Haven, Connecticut.

The Board of Inquiry held hearings in Waterbury, Connecticut, on October 14, 1974 and October 18, 1974. At those hearings, both parties appeared, presented both testimony and documentary evidence and submitted oral argument on all of the issues in dispute. No written briefs were filed.

II. BACKGROUND

Waterbury Hospital is a voluntary hospital, one of two general hospitals in the City of Waterbury. It has approximately 450 beds, making it one of the larger hospitals in the state.

In 1972, the Union won bargaining rights in the Maintenance Department, a group of about 35 employees, in an election conducted by the Connecticut State Labor Relations Board and was certified for that unit. An Agreement

was made in March, 1973, to expire September 30, 1974. In 1973, the Union won bargaining rights in the Service Unit, a group of about 300 employees, in an election also conducted by the Connecticut State Labor Relations Board and was certified for the unit. An Agreement was made in September, 1973, also to expire September 30, 1974.

The parties agreed to merge the bargaining of the two units in this round of negotiations, and the dispute is considered by the parties as a single dispute.

The bargaining units are substantially the ones customary in the health care industry. The Maintenance Unit consists of electricians, painters, plumbers, firemen, general maintenance men and others engaged in maintenance work, both skilled and unskilled. The Service Unit consists of nurses aides, orderlies, ward clerks, janitors, porters, dietary employees and other service workers.

Prior to the establishment of the Board of Inquiry, the parties had engaged in extended and serious negotiations and had met several times with the federal mediator. In spite of the efforts of the parties and of the mediator, no agreement was reached.

III. THE ISSUES

A. The Union's demands can be summarized as follows:

1. Union Security

The present Agreements provide for what is, in effect, an agency shop applicable to all employees except those employed prior to April 1, 1968. This date was selected because this was the time when a union first asked for recognition. The reasoning was that employees hired after this date should have been aware that there might ultimately be a union, and were

and that difference is almost entirely as to the size of the total package. There may be some difference in point of view as to how the package shall be allocated between increases in job rates and improvement of benefits, and there may be some preferences as between percentage increases and cents-per-hour increases. However, those issues are overshadowed, indeed overwhelmed, by the dispute as to the size of the package. If that could be agreed upon, there appears to be enough flexibility in the parties that they would work out the distribution of the package.

The basic difference is very great. The Hospital estimates the total cost of the Union's proposed one-year contract to be approximately 37% of payroll. The Hospital also estimates that the total cost of its offer is approximately 8-1/2%. In both of these figures, the Hospital has included the 2-1/2% cost of classification adjustments. The Union does not dispute the Hospital's computations, but it does insist that the 2-1/2% cost of classification adjustments should not be included because those increases were mainly for changes in job duties which entitled employees to higher classifications. This, of course, does not narrow the gap, for the Union's position is that the Hospital's offer amounts to only a 6% increase and its demands are for only a 35% package.

IV. GUIDES FOR EVALUATION OF THE PARTIES' POSITIONS

A. The Statutory Guide

The statute under which the Board of Inquiry is established provides only limited guides for evaluating the parties' positions and reach recommendations. The statute states:

> "The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute."

The objective is a "prompt, peaceful and just settlement," which is, of course, ideal. But the Board of Inquiry is left with the question whether its recommendations should aim at the point where the parties are most likely to settle, or whether its recommendations should seek to state that result which, on the basis of all of the objective facts and appropriate considerations, is a fair and workable solution.

If the Board of Inquiry knows what is acceptable to both parties, then the Report can serve as a device through which they can declare their agreement. But when the Board of Inquiry does not know what will be mutually agreeable, then, in my view, the responsibility of the Board of Inquiry is to recommend that which in its judgment, based on all of the facts and considerations available, would be a just settlement. To base the Report on some speculation as to what the parties might accept makes the whole fact-finding procedure a sham, which the parties will soon learn to treat as such. More important, it gives a premium to the party which can most successfully mislead the Board of Inquiry as to its true desires and true intentions. That, in turn, will destroy the usefulness of the Board in serving any mediating role, for neither party will dare reveal its true last best offer.

In this case, there has been extended efforts to mediate because the parties wanted the efforts made, and both have cooperated as well as the ambiguity of the process permitted. I cannot know whether I have been told either party's last best offer. I hope that I have not, for their positions seem far apart. I suspect that both were fearful that full candidness might work to their disadvantage when the Report was written. Whatever the reason, mediation has not succeeded and my role as mediator is ended. Now my function under the statute is to find facts concerning the issues and not search for hidden agendas of the parties.

I recognize the danger inherent in this statutory procedure that the recommendations in this Report may be used by the Union as a floor or the Hospital as a ceiling in the future bargaining that must take place. It may serve to hold the parties apart because neither can appear to give in to recommendations of an outsider who failed to appreciate fully the merits of its case. The only hope for success of this process is that by setting forth as openly as possible the reasoning that led to the recommendation, the Report will appeal to reasonability on which the bargaining process ultimately depends.

B. State Statutory Impediments

In 1973, the Connecticut legislature enacted Public Act No. 117, creating a Commission on Hospitals and Health Care. Among the powers granted to this Commission is the power to require every hospital to submit an annual budget showing its projected operating costs and capital expenditures (Sections 9-16). The Commission is empowered to approve or disapprove the budgets as submitted, and if a budget is disapproved, the hospital is required to change its budget to conform to the Commission's orders.

The Hospital stated that the Commission had announced and had followed the policy of refusing to approve any budget which included more than a 9% increase in labor costs. The Hospital, therefore, was constrained to limit increases in wages to that amount, and its proposal was designed to keep within that limit.

I am charged by a federal statute to hold hearings, find facts, and make recommendations "to achieve a prompt, peaceful and just settlement." That statute is the supreme law of the land and I am constrained to fulfill its

purposes even though that may run counter to the state statute. Congress has expressed a considered policy that collective bargaining in hospitals shall be governed by federal law, and that overrides the policy of any state commission. Free collective bargaining cannot function in hospitals if a state commission determines the hospital's best offer. The bargaining process is totally frustrated if the definitive decision is made before bargaining begins and those who make it never come to the bargaining table. Fact-finding would be meaningless if the Board of Inquiry were bound by a rule made by a commission without any inquiry into the facts of the case.

These limitations attempted to be imposed on hospitals freely bargaining for terms and conditions of employment are of dubious constitutionality. As one charged with performing a federal function under federal law, I cannot allow myself to be bound by them or to give them any weight in making my recommendations. Moreover, I feel confident that the Commission will recognize that where wages are determined by collective bargaining, reinforced by the employees' federally protected right to strike, it will grant an exception to its general policy and approve whatever budget is necessary to implement a settlement.

C. General Social and Economic Guide

In trying to evaluate the competing claims of the parties as to what size of an economic package is fair and appropriate in this case, a variety of factors must be considered. The parties differ both as to which factors are relevant and the weight each should be given. My purpose here is to try to articulate what I consider the most important guides and why I am unable to place much reliance on others.

The employees involved here are predominately in the low wage group. The

wage scale begins at $2.75 per hour, and the average for the whole Service group is $3.22 per hour, or about $6,500 a year. The great majority of employees here are, as the Union described them, the working poor. Even in normal times, our sense of social responsibility would urge that the wages of this group should move up faster than those of higher paid groups. In a period of inflation, when cost-of-living increases are measured in double digits, this group is most sorely squeezed, for they have no looseness in their budgets. The daily rise in the cost of food cuts deeper because a larger proportion of their budget is for food. To the extent that what is a fair increase is based on what increases others are getting, these employees should receive something more than the average.

The Union presented documents showing the amounts which the Bureau of Labor Statistics had determined was necessary to support a family on a lower income budget. Those figures show that in October, 1973, the lower income family in Hartford, Connecticut required a budget of $8,909 a year. Taking into account the inflation during the last year, that amount would now be $9,800. This emphasizes the claim that they should have something more than the average increases, but it serves no further purpose. The dollar amounts provide no useful guide as to what a worker should be paid. Regardless of how the Bureau of Labor Statistics computes this figure, the fact remains that many people working in what are commonly considered fair paying jobs earn less than this amount. Indeed, another study of the Bureau of Labor Statistics of wages paid in the Waterbury area shows relatively few categories of jobs paying this amount. Whatever may be the explanation why the BLS family budget figures diverge so widely from annual wages earned by individual workers, they are are not helpful in determining the level of wages to be recommended in a proceeding such as this.

The increase in the cost of living is a most crucial consideration. This is partly because it so strongly influences what other unions demand and win, and what employers unilaterally give. But it is also because for these employees increases in the cost of living pinch so hard. This does not mean that wage increases are, or ought to be, tied rigidly to the cost of living. When the economy is prospering and total production is increasing four or five percent every year, then workers should share in that increased production. They ought to receive increases greater than the cost of living so that their standard of living rises as the economy produces more goods. When the economy is suffering a recession, as it now is, and the total amount of goods and services produced is shrinking, then the standard of living of most people will deteriorate for there is simply not as much to be distributed. Wage increases generally will almost certainly be less than the cost of living. Taking this into account, if these employees obtain full cost of living increases during this period of recession-inflation, they will narrow the gap between themselves and most better paid workers. Bureau of Labor Statistics show that between October 1, 1973 and October 1, 1974, the cost of living increase nationally was 12.1%. The pace of increase in New York City has been above the national average, but in Boston, below the national average, so the approximate figure to use here is the national average.

Another guide of major importance is the general pattern of increases negotiated during the period. This measures more directly the extent to which these employees are catching up with other workers. A survey by the Bureau of National Affairs of collective bargaining settlements during the third quarter of 1974 (July-September) shows that the median increase in all industries for the initial year of the contract was 39¢. Non-manufacturing industry, excluding construction, showed an equivalent increase of 38.6¢ per hour.

In addition, most of these agreements included some improvements in one or more fringe benefits such as vacations, holidays, and pensions. 87 LRR 177 (BNA, October 21, 1974).

These increases, with the fringe benefits, represent for the employees involved a percentage increase somewhat less than the increase in the cost of living. The Bureau of Labor Statistics reported on October 25, 1974 that the first year wage increases negotiated in contracts covering more than 1,000 employees during the third quarter of 1974, averaged 11.1% (N.Y. Times, 10/26/74.)

The Hospital has submitted new agreements negotiated in some of the major industries in the Waterbury area which show increases of 25¢ and 35¢ an hour. Most of these, however, were negotiated in the first half of 1974, or in 1973. The Bureau of Labor Statistics survey cited above shows a sharp rise in the average settlements negotiated during the past year. In 1973, the wage increases averaged 5.8%, and in the second quarter of 1974, the average increase was only 6.2%. But as stated above, the increases negotiated in the third quarter were 11.1%. It is noted that the two Waterbury settlements cited which were negotiated during the third quarter were the largest. providing increases of 33¢ and 35¢ during the first year.

The Union has contended that the most relevant comparison is the wage level in the industry. It has defined the industry in terms of the health care industry in the New York City area, and would include Waterbury in that area. The Union has emphasized how much lower the wages and other benefits are in Waterbury than in New York City. It has also pointed out that the BLS low income family budget is higher for Hartford, Connecticut than for New York City. It is true that the distance between Waterbury and New York City is less

than 75 miles, but Waterbury has not generally been considered a part of the New York City area for economic or demographic purposes. Wage rates in the Waterbury area have never been considered comparable to those in the New York City area either in the private or public sector. Indeed, the wages of public employees in Connecticut commuter cities nearest the New York line are substantially below those in New York City. Moreover, Waterbury and other towns along the Naugatuck valley have long had the reputation of having lower wage levels than Hartford, New Haven, or the shoreline commuter cities in Connecticut. If hospital wage rates in Waterbury were made comparable to hospital wage rates in New York, they would be completely out of line with other wage rates in Waterbury.

In view of all of this, I simply cannot agree that the wage levels in the New York City hospitals provide a basis for comparison with wage levels in the Waterbury Hospital. I gain some reassurance from the fact that a similar argument pressed in a recent proceeding involving Strong Memorial Hospital in Rochester, New York was flatly rejected by the Board of Inquiry there. The Board in that case suggested only that the 1974 increases negotiated in New York, in contrast to the wage level, might provide some guide for the increases to be recommended in Rochester. Although I would be reluctant to consider the increases negotiated or arbitrated in New York City in a particular year as a definitive guide to what is a proper increase in Waterbury that same year, they are relevant in trying to obtain a more complete understanding of evolving patterns.

In the arbitration award between District 1199 and the League of Voluntary Hospitals and Homes of New York, covering 40 institutions, the increases in benefits awarded in a two-year contract beginning July 1, 1974 were substantially the following:

Wages - First year, 11%. Second year, $10 per week with a cost-of-living increase for any rise of more than 5%.

Benefit Plan - 1/2% increase January 1, 1975. An additional increase of 1% effective January 1, 1976.

Pensions - 1/2% increase July 1, 1975. An additional increase of 1/2% January 1, 1976.

Both parties have presented evidence concerning the wages and other benefits in hospitals in New England. The evidence is quite inconclusive because there are so few hospital workers organized. The only hospital with as complete organization is Mt. Sinai Hospital in Hartford, where a unit represented by the Union includes 260 service employees. Stamford Hospital and Yale-New Haven Hospital bargaining units include only dietary employees. From the data available, the wages and benefits in Waterbury Hospital seem to be somewhat below those in the bargaining units in the other hospitals. Comparison between the present effective rates in Waterbury Hospital and the rates to be effective in Mt. Sinai after November 27, 1974, indicates that on the average, the rates in Waterbury are probably about 10-15¢ below those in Mt. Sinai. On the other hand, the Hospital has pointed out that the Union has recently signed a three-year agreement covering the Maintenance unit in Griffin Hospital in Derby, Connecticut, which provides for wage increases of slightly over 9% in each year. Also, District 1199 has signed a two-year agreement at Union Hospital in Lynn, Massachusetts, providing for a 30¢ per hour increase each year.

If the employees feel the need to take more of the second year package in take home pay, then this can be done by postponing the pension benefits another year and thereby substantially increasing the take home pay.

VIII. SUMMARY

The union security issue has not been discussed because it is not a real issue. There is no plausible rationale why some forty employees should be exempt from paying regular dues and initiation fees simply because they were hired before 1968. Certainly they could not believe that when they were hired they had acquired a vested right to a lifetime free ride. The Hospital has already conceded that employees should be required to contribute to union; there is no issue of principle involved. There is only the remnant of an irrationality which the Hospital can not defend and which should be removed.

The recommendations as to wage increases and benefits are very substantial. If the increases in benefits are translated into cents per hour on the basis of the rates in effect during the second year (Service, $3.90; Maintenance $5.13) they accumulate to the following:

		Service	Maintenance
1. Wages		67¢ per hour	85¢ per hour
2. Shift Differential	0.6%		
3. Vacations	0.2%		
4. Sick Leave	0.8%		
5. Welfare Benefits	2.0%		
6. Pensions	3/2%		
Total	6.8%	26¢ per hour	35¢ per hour
Total Increase in Cents per Hour		93¢ per hour	$1.20 per hour

1 Copies Received

Date May 27, 1976

Firm Hon. Louis J. Lefkowitz

By _____

COPY OF THE WITHIN PAPER
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MAY 27 1976

ATTORNEY GENERAL